IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL DOCKET NO. 1:08cr 55-RLV

UNITED STATES OF AMERICA	)	**MOTION TO DISMISS FOR LACK OF PROVEN JURISDICTION AFTER PROPER CHALLENGE**
vs.	)	
KATHY RAY WAHLER (1)	)	
EDWARD WILLIAM WAHLER (2),	)	
et al	)	

United States District Court Western District of North Carolina

COMES NOW edward-william; wahler, of the wahler family descendants, *in propia persona*, as a Real Party in Interest, and Third Party Intervener, *Sui Juris*, protecting both My rights and My rights of claim and interest regarding KATHY RAY WAHLER (1) and EDWARD WILLIAM WAHLER (2), as presented by the claimant(s) before this venue within their original complaint(s), giving My notice and demand for Mandatory Judicial Notice, pursuant to your TITLE 28 of US CODE at FRCivP Rule 201 Judicial Notice of Adjudicative Facts, (a), (b), with particular emphasis to (d), also (e), and (f), of the presentments and attachments contained herein and which follow:

Before this Court are documents that mandatory judicial notice is demanded of, the first is a copy of a lawsuit filed in an allegedly Article III Court in Washington D.C. in the original jurisdiction, which may also be found as Attachment 1 to an Exhibits filing placed in the Case File on October 30, 2009 already before this Court and is included by reference as if fully set forth herein The lawsuit was filed as a claim of right to the remedy declared Farm Workers National Union, 442 U.S. 289 (1979) wherein the US Supreme Court stated;

> When the plaintiff has alleged an intention to engage in acourse of conduct arguably affected with a Constitutional interest, but proscribed by statute and there exists a credible threat of prosecution there under, he "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief ."

Entry of default against the defendants was docketed June 12, 200. Four days later My wife and I were arrested. The lawsuit was subsequently dismissed *Sua Sponte,* with no motion from the defendants for such relief, in what amounts to a denial of rights, due process of law, equal protection under the law, and an obvious abuse of power. This Court in proceeding may now very well be viewed as becoming a co-conspirator both of and in the aforementioned abuses. Which alone is a well settled and legitimate cause to deny this Court jurisdiction over the matters complained of in the original complaint identified in this instance as 1:08cr 55-RLV. And the Court is here now so petitioned to find and dismiss with prejudice against the plaintiff(s), or lacking that proper step, then by My demand to show a finding of facts with conclusions of law to justify the Court's failure to dismiss.

As a friend of Mine once stated, "Every legal case fails on the first defect." and as also a famous jurist once said "The best disinfectant is a little sunshine." So with that in mind maybe it is appropriate at this time to cast a little sunshine on some of the apparent defects regarding the subject matter before the Court in this particular instance.

First there is the matter concerning a Statute of Limitations problem related to the vast majority of so called "offenses" in the purported indictment. Over the first 4 year period of the investigation concerning the matters before this Court, FBI Special Agent Andrew F. Romagnuolo consistently pointed out at every opportunity that there was a 5 year Statute of Limitation regarding the matters, related to this case, for which he was conducting an investigation. Yet suddenly after placing Our confidence in the courts by filing Our lawsuit properly, providing proper notice of such to the defendants and then allowing the defendants 60 days to respond which is well beyond the 20 day minimum requirement, the plaintiff then declares that the alleged crimes are so heinous that they should be afforded a 10 year Statute of Limitation in pursuit of their prosecution for the matters which are now before the Court in this particular instance. Yet the plaintiff has still not presented any act of Congress which would corroborate their claim concerning the 10 year Statute of Limitation right. And furthermore if such a claim were predicated on an antiterrorism measure meant to give the U.S. more time to pull Osama Bin Laden out of some cave over in Afghanistan, then pray tell will somebody please explain to Me what such a claim would have to do with a family being situated on the land of the county Henderson at or near the Fletcher township of the American state republic called north Carolina, who were in pursuit of this truth and had gone so far as to petition the Court to prove this very same truth.

The 4th Circuit Court of Appeals has held that an investigation is "stale" after 18 months. The 4th Circuit Court stated that because memories can fade, and witnesses may disappear that it would be a denial of due process to allow a prosecution to proceed on the merits of a stale investigation. This of course gives an indication as to one of the underlying reasons for a Statute of Limitations in the first place, with exceptions for such things as murder or fraud. With the immediate in mind one may now take a different view of the investigation relating to the matters before this Court in this particular instance, which has gone on for over 5 years without the obvious detection of anything new. The stale investigation issue is fully briefed in a motion before this Court which can be found in the miscellaneous search warrant case file and is included by reference as if fully set forth herein.

While reviewing material for the matters before this Court I reread the Court's order of January 21, 2009, denying My motion for bail, wherein you made two interesting statements:

The first was "defendant believes himself not be a citizen of the United States or subject to U.S. Laws." this statement is interesting in light of, U.S. v. Cruikshank, 92 U.S. 542 where the court stated; "We have in our political system a government of each of the several states and a government of the United States. Each is distinct from the other and each has citizens of it's own", again in U.S. v. Anthony 24 Fed Cas 829, 830 where the Court stated; "a citizen can be a citizen of one of the several states without being a citizen of the United States" and further Cross v. Board of Supervisors 221 A.2d 431, a 1966 case where the Court stated; " Both before and after the Fourteenth Amendment to the Federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state."

The second statement was "more specifically, the defendant advised the officer that he did not have a social security number, which was false." Now, given My voluminous documentation and communication with the corporate U.S. on this issue, copies of which can be found on DVD's attached to

Our D.C. lawsuit, now before this Court, the simple fact is that the statutes enacted by Congress do not provide for, nor allow a domiciliary of any one of the several union states to use a Social Security Number, Congress's acts only authorize that Social Security be administered within the District of Columbia and Federal territory, e.g. Post Offices, Forts, Magazines, U.S. Virgin Islands, etc. Which, for My fear of losing the sovereign status, rights, privileges, protections and immunities afforded Me in conjunction with the belief of Social Security being an unconscionable contract, is the reason for why I terminated that legal relationship with the U.S., being further supported by the Brandeis rules which emanated from the U.S. Supreme Court decision concerning the matter of Ashwander v. Tennessee Valley Authority 297 U.S. 288, 56 S. Ct. 466 (1936).

So, with the immediate in mind and considering that ignorance of the law is no excuse, especially where government actors and more particularly judicial officers are concerned, your two statements in review above seem contrary to that which has already been decided and is known in law. It is therefore My belief the more likely explanation and consequently more useful for you and this territorial court is that you do in fact know the law, and that in your knowing I wasn't a U.S. citizen availing Myself of a Social Security Number and/or Account you would be forced to acknowledge, both in fact and pursuant to the Law, My not being subject to the vast majority of U.S. statutory code as expressed throughout most of the 50 Titles of U.S. Code, the Code of Federal Regulations and various other sources of U.S. Administrative enforcement policy, and that I would only be subject to the Laws enacted pursuant to the U.S. Congress's 17 limited and enumerated powers.

However, in your trying to establish by conclusive presumption, facts which are not only not in evidence but which are openly declared under the pains and penalties of perjury as false, you have furhter engaged in the scheme of attempting to create a false impression that you could try this case in a non-Article III, U.S. Territorial Admiralty Jurisdiction, without any proven Jurisdiction over the "defendants."

The Court's have also stated the following on matters concerning any conclusive presumption;

> "A conclusive presumption may be defeated where it's application would impair a party's Constitutionally protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party's due process and equal protection rights."

The above cite is contained in the administrative process attached to the D.C. lawsuit which again is already before this Court. And is indicative of yet another defect constituting more evidence in the denial of due process and equal protection for the "defendants", which, in light of the structural defects overall are again grounds for a loss of jurisdiction in the instant case before this Court.

Again with respect to being subject to U.S. Laws, one needs to look no further than what the Court's have already decided on this matter, The United States government "is a foreign corporation in respect to a state", In Re Merriam 36 N.E. 505 16 S. Ct. 1073.

From the Federal Rules of Criminal Procedure- Rule 54(c) now Rule 1,

> "Act of Congress includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession" and "State" includes District of Columbia, Puerto Rico, territory and insular possession: [and] an act of Congress cannot be utilized outside of the above described venue within any one of the several states of the union states party to the Constitution for the united States of America without an implementing regulation promulgated for that specific purpose."

And most specifically:

> "It is no longer open to question that general government, unlike the states, possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation." Carter v. Carter Coal Co. 298 U.S. 238. 56 S. Ct. 855 (1936).

Ergo, to conclude that the rarest of all creatures today, a state citizen, would be subject to the plenary powers and legislative authority of Congress is simply a notion not supported by any cognizable theory and most certainly finds no support in Law.

Which now brings Me to an appropriate time for introducing the 9000 pound elephant, as it were, into this case file; the unconstitutional enactment of Public Law 80-772 and Title 18 of the criminal code. That Law contained a jurisdictional section, 18 USC 3231 which would have given the U.S. District Court authority to prosecute criminal violations of Title 18. Yet the constitutional and procedural defects committed by Congress leading to the purported enactment of P.L. 80-772 and Title 18 are many, some of which include:

Congress had adjourned and was not in session during the purported passing of the enactment.
The House and Senate voted on different versions of the bill.
The House did not have a quorum when it voted on it's version of the Bill.
The Bill was not properly enrolled.
Title 18 has never been published in the Federal Register.

Evidence of the above transgressions are now before this Court in the form of Congressional Archivist's signed and sealed documentation which furthermore this Court has had as evidence since November of 2008. Nor has the U.S. Attorney provided one piece of evidence in rebuttal to the irrefutable proof of the claims made in this instance regarding P.L. 80-772 or Title 18, and specifically section 3231 which should now, by this Court, be considered null and void *ab initio*. Pursuant to the findings stated in Norton v. Shelby county;

> "An unconstitutional act is not law; it protects no rights, it creates no duties, affords no protections, it creates no office, it is in legal contemplation as inoperative as though it had never been passed."

The Court went on to say an unconstitutional act does not need to be repealed, for the act is as if it never happened. Therefore, jurisdiction which this Court lacks based on the evidence now on file and before this Court, for the matter in this instance, is hereby challenged. As too many Courts have repeated, jurisdiction, once challenged must be proven on the record. So, since Judges cannot rule on their own jurisdiction, I believe it fair to say that Ms. Jill Westmoreland Rose or any other representative of the government in this matter will have their work cut out for their self, and even more heavily now since it will be at the risk of their own commercial liability. Again for the sake of repeating Myself, I demand that the Court forthwith take Mandatory Judicial Notice of the stated facts herein and that the Court be moved to protect My rights to due process. See Maine v. Thiboutot, and also Summer v. Beeler, 50 Inc 341,342 (1875) wherein the Court stated;

> "All persons (public officials, State and/or Federal at all levels of government) are presumed to know the Law; and if they act under an unconstitutional enactment of the Legislature, they do so at their own peril and must suffer the consequences of their acts."

I would also point out, that which the Court will find in the administrative process attached to our D.C. Lawsuit, our having served notice on the U.S. regarding the Title 18 issue more than 2 years ago, making it even more clear now as to has the unclean hands in this instant case.

Following up on the issue of publication in the Federal Register, the Court will find this issue fully developed in the back half of the administrative process attached our D.C. Lawsuit in the form of a memorandum of Law. However in summarizing;

> The U.S. Supreme Court has ruled that a fundamental element of "procedural due process" is "due notice." The Federal Register act at 44 USC 1501(a)(1) legally mandates that "all Laws" having general applicability and legal effect MUST be published in the Federal Register. The Federal Register Act also stipulates that all laws which prescribe a penalty have "general applicability and legal effect", therefore mandating publication. 44 USC 1508 goes on to say that notice is deemed to be given to all persons residing within the States of the Union upon publication in the Federal Register.

The Administrative Procedures Act adds at 5 USC 552(a)(1);

> "Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to, or be adversely affected by, a matter required to be published in the Federal Register which was not so published."

The only exception to the requirement of publication for applicability to any person is for "Federal agencies, or persons in their capacity as officers, agents or employees thereof. 18USC 3231 nor any of the Statutes which the Plaintiff in this case claims I have violated have ever been published in the Federal Register, effectively further denying this Court *in personam* and subject matter jurisdiction. All such claims to the contrary must be proven.

Additional defects include:

Plaintiff in this case, U.S.A. is an instrumentality of the U.S., a federal corporation pursuant to 28 USC 3002 (15)(a-c), which doesn't exist at law. The Committee on Styles in writing the Constitution specifically debated granting Congress the power to incorporate, the vote was 8 to 3 against the granting of any such power to Congress. Interestingly, the biggest fear concerning Congress's having this authority was that it would be used to create a National Bank. Starting with the Organic Act of 1871 (later ruled unconstitutional) Congress has continually chartered entities, including the U.S. despite the clear denial of such authority to do so. While the implications of this reality include the fact that hundreds of National Associations, GSEs, GSOs and other Federally chartered entities do not exist at Law, three of the mote pertinent ones, with respect to this case are the Postal Service created around 1973, the Federal Reserve created around 1916 and the Plaintiff itself being the U.S. Federal Corporation. Since each of these represent an unconstitutional act, and therefore embody no rights, duties or offices, they lack the capacity to sue and or to be sued. It is axiomatic, for example, that one cannot commit mail fraud by utilizing the services of a U.S. Postal Service that does not exist at Law! This Court is again denied jurisdiction, since the Plaintiff has not the capacity to sue or to be sued, and any transactions measured in Federal Reserve Notes are also void since the Federal Reserve itself does not exist at Law.

It is further worth pointing out that a total of 2 Senators were present and voted for the Federal Reserve Act on Christmas Eve, 1916. Therefore, the Senate by not having a quorum present did in fact cause such votes to become void, thereby making the act unconstitutional from the outset. Once again, denying this Court jurisdiction since the claim for the alleged fraud is centered around transactions denominated in Federal Reserve Notes which are a legal impossibility.

There is no evidence in this case. Congress has respected it's inherent limitations and the U.S. Supreme Court's declaration that there is no national police force, by limiting the Federal Bureau of Investigation (FBI) as to whom they may investigate at 28 USC 535. Since the FBI has been repeatedly asked to provide evidence of their authority to investigate state citizens within one of the several union states and evidence that such authority has been published in the Federal Register, and with no such evidence existing it only stands to reason that any evidence collected by the FBI in this case is proverbially speaking "fruit from the forbidden tree" and that as such must be barred. Therefore on this point the Court would be required to dismiss this case, in this instance, for lack of evidence.

Another defect which, while sure to raise the ire of the Court, must none the less be placed on the record as follows;

Within Article III of the United States Constitution, the Supreme Court is specifically created, other inferior courts are left to Congress to create as it sees the need may arise.

In Title 28 of U.S. Code, Congress creates the United States District Courts. I have studied the chapters particular to the creation of the United States District Courts, and in light of that research I have found that 3 Article III Courts have been established; One in Washington D.C., One in Hawaii, and One in New York City. Nowhere have I found the establishment by any act of Congress an Article III Court for and/or in North Carolina. It is well settled that Congress says what it means and means what it says. And I am certain that the Courts have heard Congress.

In Balzac v. Porto Rico 258 U.S. 298 at 312 Chief Justice Howard Taft of the Supreme Court said; "The United States District Court is not a true United States Court established under (and pursuant to) Article III of the Constitution to administer the judicial power of the United States therein conveyed. It is created by virtue of the sovereign congressional faculty; granted under Article IV § 3, of that instrument, of making all needful rules and regulations respecting the territory belonging to the United States. The resemblance of it's jurisdiction to that of true United States Courts in offering on opportunity to non-residents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court."

That seems pretty easy to understand, even for a layman of average education, and it simply confirms what a reading of Title 28 already states. On the DVDs attached to the D.C. Lawsuit is a treatise titled "Whatever Happened to Justice" which documents in excruciating detail the true nature of the United States District Courts and of the judges presiding therein.

Speaking of the judges, in Terry J Hatter Jr. *et al* v. U.S., case no. 91-5039 the Federal Court of Appeals stated in its decision in a footnote on page 2 that United States District Court judges are not Article III judges.

So a sane, sentient being, such as Myself, has to ask; "How can I expect due process, justice and an airing of the truth in a Court masquerading as something it is not?" It seems to Me that to do otherwise would defy any sense of logic and reason.

In the document captioned "Government's response to Defendant's MOTION TO DISMISS FOR LACK OF JURISDICTION", dated July 29, 2008, submitted by Gretchen C. F. Shappert, United States Attorney. She cited 18 USC § 3231 as the source of jurisdiction for this Court. This Court now has evidence disproving that claim since 18 USC § 3231 does not exist at law. She also cites from United States v. Hartwell 448 F.3rd 707, 716, (2006) "there can be no doubt that Article III permits Congress to

assign Federal criminal prosecutions to Federal Courts." That being the beginning and the end of the "jurisdictional inquiry." As Chief Justice Taft pronounced, Article III is the constitutional conveyance for Federal Judicial Authority, and the rub is that Congress did not bestow it upon United States District Courts nor to the judges presiding therein even though the Congress is constitutionally empowered to do so.

Supreme Court Justice Robert Jackson said; "It is not the function of government to keep the citizens from falling into error, it is rather the function of the citizen to keep the government from falling into error."

The problem is, history is replete with the seared skeletons of those who dared expose the chicanery of the government actors, as in the instant case before this Court.

The administrative process which is attached to our D.C. Lawsuit, now made a part of the evidence file in this case, contains numerous statements of facts and citations of law which demonstrate the unclean hands of those bringing the commercial claims made in their complaints which are in this instance before this Court. All are now before this Court and a finding of facts and conclusions of law is hereby demanded as a protection of My due process right. It is further demanded that this Court take mandatory judicial notice as a point of order that it is well settled that a failure to deny is an admission. The Plaintiff in this case admits to everything it cannot disprove in the case file including the true legal status of 18 USC § 3231.

In the seminal case Marbury v. Madison 5 U.S. 137, the Court Declared; "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve that high appellation, if the laws furnish no remedy for the violation of a vested legal right."

We put our Faith in one Court, presumed to be an Article III Court, which had as it's highest duty but to seek justice and to protect the citizens from the excesses of the government. This is now your chance, as part of your sworn duty to perform along the vestige of honor you sought to bring to the legal profession many years ago, to now end this travesty before more harm is done and we all suffer the consequence of the unrest which is settling upon this nation.

For all of the reasons aforementioned I petition this Court, as a foreign sovereign having My immunity intact by declaration and law, to dismiss this case with prejudice against the Plaintiffs.

This 3 day of November 2009.

11/05/09 _____, *sui juris*
Date edward-william; wahler

edward-william; wahler, equitable title owner of EDWARD WILLIAM WAHLER
Real Party in Interest
Owner/Creditor to the United States/Plaintiff
Qualified Investor for plaintiff at Depository Trust Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November ___, 2009, I had the foregoing filed with the Clerk of Court for the United States District Court in the Western District of North Carolina, Asheville Division, and that a copy of such filing will be delivered to Plaintiff's Counsel, Jill Westmoreland Rose; Assistant to the United States Attorney, at 100 Otis St., Asheville, NC 28803.

11/05 _____
Date Signed

Service performed by: